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JUL 23 2007

OFFICE OF PETITIONS

In re Application of :
Ulintz :
Application No. 10/692,217 : ON PETITION
Filed: October 23, 2003 :
Attorney Docket No. 109770.0018 :

This is a decision on the correspondence entitled, "RESPONSE TO NOTICE OF ABANDONMENT," filed May 21, 2007. The correspondence will be treated as a petition under 37 CFR 1.181, requesting that the Office withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any further reconsideration petition must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. This is **not** final agency action within the meaning of 5 U.S.C. § 704.

This application was held abandoned as a result of petitioner's alleged failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within the time period provided in 37 CFR 41.37(a)(1). As the Office had no record of an appeal brief (and appeal brief fee) being filed within two (2) months of the Notice of Appeal filed September 21, 2006, and no extensions of time under the provisions of 37 CFR 1.136(a) were obtained, the appeal was dismissed and the proceedings as to the rejected claims were terminated. See 37 CFR 1.197(b). As no claim was allowed, the application was considered abandoned on November 22, 2006. See MPEP 1215.04.

Petitioner asserts a reply was timely transmitted via facsimile to the Office on November 21, 2006. The Office has no record of receiving the Appeal Brief. However, the copy of the Brief of Appellant under 37 CFR 1.192 submitted with the instant petition contains a certificate of transmission citing a November 21, 2006 date of transmission.

Under 37 CFR 1.8(b), correspondence is considered timely filed if petitioner: supplies (1) a copy of the previously transmitted correspondence with a signed certificate of transmission affixed thereto (2) a statement which attests on a personal knowledge basis to the previous timely transmission. A copy of the sending unit's report confirming transmission may be used to

support this statement. Furthermore, under 37 CFR 1.8(c), the Office may require additional evidence to determine if the correspondence was timely filed.

Petitioner has supplied persuasive evidence of facsimile transmission on November 21, 2006. The transmittal form bears a proper certificate of mailing, dated November 21, 2006, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. In addition, the person signing the certificate, Jennifer C. Safranek, had reasonable basis to expect that the correspondence would be transmitted on November 21, 2006. It is noted that Ms. Safranek signed the certificate of transmission for the present petition. Petitioner has submitted their sending unit's confirmation page that shows 15 pages were successfully transmitted to 571 273-0053.

Unfortunately, petitioner has not provided evidence that the \$250.00 Appeal Brief fee was paid on November 21, 2006. It appears that the Appeal Brief was submitted, but the required fee was not paid.

Therefore, the petition is **dismissed**. Petitioner is encouraged to file evidence that the Appeal Brief fee was submitted in any reconsideration petition. If petitioner is not able to provide persuasive evidence that the fee was paid, petitioner should consider filing a petition to revive under the unintentional delay standard of 37 CFR 1.137(b).

For future reference, facsimile transmissions (with few exceptions) **must** be sent to the centralized facsimile number – 571-273-8300-, or they will be deemed informal/proposed responses. See MPEP 502.01 In the instant case, the Notice of Appeal and Appeal Brief should have been sent to the centralized facsimile number. The number used, 571 273-0053, is the facsimile number for the Board of Appeals.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: U.S. Patent and Trademark Office
Customer Service Window, Mail Stop Petition
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By FAX: (571) 273-8300– ATTN: Office of Petitions

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.

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